

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
Deputy Attorney General
4 State Bar No. 193338
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5341
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. **2013 - 281**

13 **JAMES ANDREW WEST**

Respondent.

STATEMENT OF ISSUES

14
15 Complainant alleges:

16 **PARTIES**

17 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely
18 in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
19 Department of Consumer Affairs.

20 2. On or about November 28, 2011, the Board received an application for a registered
21 nurse license from James Andrew West ("Respondent"). On or about November 18, 2011,
22 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
23 representations in the application. The Board denied the application on December 23, 2011.

24 **STATUTORY PROVISIONS**

25 3. Business and Professions Code ("Code") section 2736 provides, in pertinent part, that
26 the Board may deny a license when it finds that the applicant has committed any acts constituting
27 grounds for denial of licensure under section 480 of that Code.

28 ///

1 4. Code section 2761 states, in pertinent part:

2 The board may take disciplinary action against a certified or licensed
3 nurse or deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct . . .

5

6 (f) Conviction of a felony or of any offense substantially related to the
7 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof . . .

8 5. Code section 2762 states, in pertinent part:

9 In addition to other acts constituting unprofessional conduct within the
10 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
person licensed under this chapter to do any of the following:

11 (a) Obtain or possess in violation of law, or prescribe, or except as
12 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
himself or herself, or furnish or administer to another, any controlled substance as
13 defined in Division 10 (commencing with Section 11000) of the Health and Safety
Code or any dangerous drug or dangerous device as defined in Section 4022.

14 (b) Use any controlled substance as defined in Division 10 (commencing
15 with Section 11000) of the Health and Safety Code, or any dangerous drug or
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
16 in a manner dangerous or injurious to himself or herself, any other person, or the
public or to the extent that such use impairs his or her ability to conduct with safety to
17 the public the practice authorized by his or her license.

18 (c) Be convicted of a criminal offense involving the prescription,
consumption, or self administration of any of the substances described in subdivisions
19 (a) and (b) of this section, or the possession of, or falsification of a record pertaining
to, the substances described in subdivision (a) of this section, in which event the
20 record of the conviction is conclusive evidence thereof . . .

21 6. Code section 2765 states:

22 A plea or verdict of guilty or a conviction following a plea of nolo
23 contendere made to a charge substantially related to the qualifications, functions and
duties of a registered nurse is deemed to be a conviction within the meaning of this
24 article. The board may order the license or certificate suspended or revoked, or may
decline to issue a license or certificate, when the time for appeal has elapsed, or the
25 judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a subsequent
26 order under the provisions of Section 1203.4 of the Penal Code allowing such person
to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
27 the verdict of guilty, or dismissing the accusation, information or indictment.

28 ///

1 7. Code section 480 states, in pertinent part:

2 (a) A board may deny a license regulated by this code on the grounds that
3 the applicant has one of the following:

4 (1) Been convicted of a crime. A conviction within the meaning of this
5 section means a plea or verdict of guilty or a conviction following a plea of nolo
6 contendere. Any action that a board is permitted to take following the establishment
7 of a conviction may be taken when the time for appeal has elapsed, or the judgment
8 of conviction has been affirmed on appeal, or when an order granting probation is
9 made suspending the imposition of sentence, irrespective of a subsequent order under
10 the provisions of Section 1203.4 of the Penal Code.

11 (2) Done any act involving dishonesty, fraud or deceit with the intent to
12 substantially benefit himself or another, or substantially injure another; or

13 (3)(A) Done any act that if done by a licentiate of the business or
14 profession in question, would be grounds for suspension or revocation of license.

15 (B) The board may deny a license pursuant to this subdivision only if the
16 crime or act is substantially related to the qualifications, functions, or duties of the
17 business or profession for which application is made . . .

18 8. California Code of Regulations, title 16, section 1444 states, in pertinent part:

19 A conviction or act shall be considered to be substantially related to the
20 qualifications, functions or duties of a registered nurse if to a substantial degree it
21 evidences the present or potential unfitness of a registered nurse to practice in a
22 manner consistent with the public health, safety, or welfare. Such convictions or acts
23 shall include but not be limited to the following:

24
25 (c) Theft, dishonesty, fraud, or deceit . . .

26 **CONTROLLED SUBSTANCES**

27 9. "Marijuana" is a Schedule I controlled substance as designated by Health and Safety
28 Code section 11054, subdivision (d)(13).

FIRST CAUSE FOR DENIAL

(Criminal Convictions)

10. Respondent's application is subject to denial pursuant to Code sections 2736, 2761,
subdivision (f), and 480, subdivisions (a)(1) and (a)(3)(A), in that Respondent was convicted of

///

///

///

1 crimes which are substantially related to the qualifications, functions, and duties of a registered
2 nurse, as set forth below.

3 a. In or about 1983, Respondent was convicted of driving under the influence of
4 alcohol, in violation of Vehicle Code section 23152, subdivision (a). The circumstances of the
5 crime are as follows: On or about March 26, 1983, a deputy with the Santa Clara County
6 Sheriff's Department performed a traffic stop on Respondent's vehicle. When the officer
7 contacted Respondent, he noted that Respondent had a strong odor of an alcoholic beverage on
8 his breath, his eyes were bloodshot and droopy, and his speech was slurred. Respondent
9 underwent a breath test and was determined to have a blood alcohol level of 0.18 and 0.20
10 percent.

11 b. On or about January 30, 1984, Respondent was convicted of violating Code of
12 Federal Regulations, title 36, sections 4.5 (driving on a suspended license), 2.37, subdivision
13 (b)(2) (possession of the controlled substance Marijuana), and 4.17 (exceeding the speed limit).
14 Respondent was placed on summary probation for one year. The subject incident occurred on or
15 about January 29, 1984, while Respondent was at Yosemite National Park.

16 c. On or about August 3, 1984, in the criminal proceeding titled *People v. James*
17 *Andrew West* (Muni. Ct. Santa Clara County, 1984, Case No. A8417191), Respondent pled nolo
18 contendere to violating Vehicle Code sections 23103 (reckless driving) and 12500, subdivision
19 (a) (license not in possession). The imposition of Respondent's sentence was suspended and
20 Respondent was placed on probation for 2 years on terms and conditions. The subject incident
21 occurred while Respondent was on probation for his conviction of January 30, 1984.

22 d. In or about 1985, Respondent was convicted of driving while having a blood alcohol
23 of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b). The
24 circumstances of the crime are as follows: On or about May 15, 1985, deputies with the Santa
25 Clara County Sheriff's Department were requested to assist another officer with a possible DUI.
26 When the deputies contacted Respondent, they observed that he was unstable on his feet, his eyes
27 were bloodshot, his speech was slow and slurred, and he had an odor of an alcoholic beverage on
28 his breath. The deputies placed Respondent under arrest for driving under the influence of

1 alcohol. The subject incident occurred while Respondent was on probation for his conviction of
2 August 3, 1984.

3 e. On or about January 23, 1986, in the criminal proceeding titled *People v. James*
4 *Andrew West* (Muni. Ct. Santa Clara County, 1986, Case No. A8527673), Respondent pled guilty
5 to violating Penal Code sections 602, subdivision (m) (trespass), and 594 (vandalism), both
6 misdemeanors. The circumstances of the crimes are as follows: In or about December 1985,
7 Respondent drove his vehicle onto private property owned by Paul Masson Mountain Winery, cut
8 through a chain located on the south side of the property and drove into the vineyard (the main
9 gate was locked and all entrances were posted with "no trespassing" signs), then got his vehicle
10 stuck in the mud. A security guard discovered Respondent's truck on the premises and contacted
11 the police, who later arrested Respondent for trespass and vandalism (Respondent had damaged
12 various areas in the vineyard which had recently been hydro-seeded). The subject incident
13 occurred while Respondent was on probation for his conviction of August 3, 1984.

14 f. On or about January 29, 1986, Respondent was convicted of driving while having a
15 blood alcohol of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision
16 (b). The subject incident occurred while Respondent was on probation for his conviction of
17 August 3, 1984.

18 g. On or about August 18, 1986, in the criminal proceeding titled *People v. James*
19 *Andrew West* (Muni. Ct. Santa Clara County, 1986, Case No. A8630585), Respondent pled guilty
20 to violating Penal Code section 647, subdivision (f) (public intoxication), a misdemeanor.

21 h. On or about April 4, 1988, in the criminal proceeding titled *People v. James Andrew*
22 *West* (Muni. Ct. Santa Clara County, 1998, Case No. C8864376), Respondent pled nolo
23 contendere to violating Vehicle Code sections 23152, subdivision (b) (driving while having a
24 blood alcohol of 0.08 percent or more), and 14601.2, subdivision (a) (driving on a
25 suspended/revoked license), both misdemeanors. Respondent also admitted that he had 3 prior
26 DUI convictions and one prior conviction for driving on a suspended license. The imposition of
27 Respondent's sentence was suspended and Respondent was placed on probation for 3 years on
28 terms and conditions. Respondent was also ordered to serve 210 days in the county jail. The

1 circumstances of the crime are as follows: On or about March 19, 1988, officers with the
2 Milpitas Police Department performed a traffic stop on Respondent's vehicle. When the officers
3 contacted Respondent, they observed that he had an odor of an alcoholic beverage on his breath,
4 his speech was slurred, and his eyes were red and watery. Respondent underwent field sobriety
5 tests and breath tests. Respondent's breath tests showed that he had a blood alcohol of 0.19 and
6 0.20 percent.

7 i. In or about 1992, Respondent was convicted of violating Penal Code section 647,
8 subdivision (f) (public intoxication). The circumstances of the crime are as follows: On or about
9 September 19, 1992, an officer with the Milpitas Police Department found Respondent "passed
10 out" in his vehicle while the vehicle was parked on South Abbott Avenue near State Route 237.

11 j. On or about May 4, 1998, in the criminal proceeding titled *People v. James Andrew*
12 *West* (Muni. Ct. Santa Clara County, 1998, Case No. C9882050), Respondent pled nolo
13 contendere to violating Vehicle Code sections 4462.5 (false evidence of registration) and 23222,
14 subdivision (b) (possession of the controlled substance Marijuana), both misdemeanors. The
15 circumstances of the crimes are as follows: On or about March 20, 1998, an officer with the
16 Santa Clara Police Department performed a traffic stop on Respondent's vehicle. The officer told
17 Respondent that he had a 1998 registration tag on his rear license plate although the vehicle's
18 registration was expired. Respondent admitted that he had taken the registration tag off of his
19 other vehicle. The officer determined that Respondent had an outstanding arrest warrant and took
20 him into custody. During a subsequent search of Respondent's vehicle, the officer found that
21 Respondent was in possession of a "baggie" containing 28 grams of Marijuana.

22 k. On or about May 21, 1998, in Santa Clara County Municipal Court, Case No.
23 C9540855, Respondent was convicted of violating Penal Code sections 484/488 (theft/petty
24 theft), a misdemeanor. The subject incident occurred on or about March 7, 1995.

25 l. On or about August 17, 1998, in the criminal proceeding titled *People v. James*
26 *Andrew West* (Super. Ct. Santa Clara County, 1998, Case No. 207447), Respondent pled nolo
27 contendere to violating Vehicle Code section 23153, subdivision (b) (driving with a 0.08 blood
28 alcohol and causing injury), a felony. On or about October 20, 1998, Respondent was placed on

1 probation for 3 years and was ordered to serve 1 year in the county jail. On or about January 6,
2 2003, the court denied Respondent's petition for reduction of the felony to a misdemeanor due to
3 the seriousness of the offense committed, Respondent's "lengthy" criminal history and prior
4 similar felony/misdemeanor convictions, and the fact that Respondent committed the offense
5 while he was on court-ordered probation. The incident upon which Respondent's conviction was
6 based occurred on or about June 12, 1998.

7 **SECOND CAUSE FOR DENIAL**

8 **(Possession of a Controlled Substance)**

9 11. Respondent's application is subject to denial pursuant to Code sections 2736, 2761,
10 subdivision (a), 2762, subdivision (a), and 480, subdivision (a)(3)(A), in that on or about January
11 29, 1984, and March 20, 1998, Respondent possessed various quantities of the controlled
12 substance Marijuana, in violation of Code of Federal Regulations, title 36, section 2.37,
13 subdivision (b)(2), and Vehicle Code section 23222, subdivision (b), as set forth in subparagraphs
14 10 (b) and (j) above.

15 **THIRD CAUSE FOR DENIAL**

16 **(Use of Alcoholic Beverages to an Extent or in a Manner**

17 **Dangerous or Injurious to Oneself, Others, and the Public)**

18 12. Respondent's application is subject to denial pursuant to Code sections 2736, 2761,
19 subdivision (a), 2762, subdivision (b), and 480, subdivision (a)(3)(A), in that on or about March
20 26, 1983, May 15, 1985, 1986, March 19, 1988, September 19, 1992, and June 12, 1998,
21 Respondent used or consumed alcoholic beverages to an extent or in a manner dangerous or
22 injurious to himself, others, and the public, as set forth in subparagraphs 10 (a), (d), (f) through
23 (i), and (l) above.

24 **FOURTH CAUSE FOR DENIAL**

25 **(Convictions Related to the Consumption of Alcoholic Beverages**

26 **and Possession of Controlled Substances)**

27 13. Respondent's application is subject to denial pursuant to Code sections 2736, 2761,
28 subdivision (a), 2762, subdivision (c), and 480, subdivision (a)(3)(A), in that in or about 1983,

1 1985, and 1992 and on or about January 29, 1986, August 18, 1986, April 4, 1988, and August
2 17, 1998, Respondent was convicted of criminal offenses involving the consumption of alcoholic
3 beverages, as set forth in subparagraphs 10 (a), (d), (f) through (i), and (l) above. Further, on or
4 about January 30, 1984, and May 4, 1998, Respondent was convicted of criminal offenses
5 involving possession of a controlled substance, as set forth in subparagraphs 10 (b) and (j) above.

6 **FIFTH CAUSE FOR DENIAL**

7 **(Dishonesty, Fraud or Deceit)**

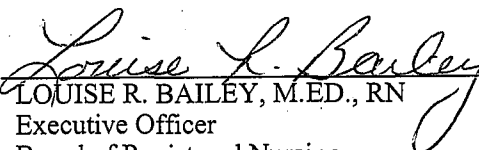
8 14. Respondent's application is subject to denial pursuant to Code section 480,
9 subdivision (a)(2), in that he committed acts involving dishonesty, fraud, or deceit with the intent
10 to substantially benefit himself or another, or substantially injure another, as set forth in
11 subparagraphs 10 (j) and (k) above.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Registered Nursing issue a decision:

- 15 1. Denying the application of James Andrew West for a registered nurse license;
16 2. Taking such other and further action as deemed necessary and proper.

17
18 DATED: October 11, 2012


19 LOUISE R. BAILEY, M.ED., RN
20 Executive Officer
21 Board of Registered Nursing
22 Department of Consumer Affairs
23 State of California
24 Complainant

25
26
27
28 SA2012104834